No. 79-1631

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA AND DEMOCRATIC NATIONAL COMMITTEE
Appellants,

v.

WISCONSIN EX REL. BRONSON C. LA FOLLETTE, AND DEMOCRATIC PARTY OF WISCONSIN
Appellees.

ON APPEAL FROM THE SUPREME COURT OF WISCONSIN

JOINT APPENDIX

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State of Wisconsin

Supreme Court

STATE OF WISCONSIN *ex rel.*
BRONSON C. LA FOLLETTE,
Petitioner-Appellant,

v.

79-1328-0A

DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA, DEMOCRATIC NATIONAL COMMITTEE, AND DEMOCRATIC PARTY OF WISCONSIN,
Respondents.

DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA, *et al,*
Appellants,

v.

BRONSON C. LA FOLLETTE, *et al,*
Respondents.

Probable jurisdiction is noted in Supreme Court of the United States

79-1631

DOCKET ENTRIES

Document	Date
Petition for Leave to Commence Original Action	Aug. 29, 1979
Answer of the Democratic Party of United States of America	Sept. 24, 1979
Answer of the Democratic Party of Wisconsin	Sept. 24, 1979
Answer of Democratic Party of the United States of America and Democratic National Committee	Oct. 11, 1979
Order of Supreme Court of Wisconsin (setting oral argument on question of taking original jurisdiction)	Aug. 31, 1979
Order of Supreme Court of Wisconsin (setting briefing schedule and order for oral argument)	Sept. 12, 1979
Decision of Supreme Court of Wisconsin	Jan. 19, 1980

State of Wisconsin

In Supreme Court

STATE OF WISCONSIN EX REL.
BRONSON C. LA FOLLETTE,
Petitioner,

v.

DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA,
DEMOCRATIC NATIONAL COMMITTEE,
AND
DEMOCRATIC PARTY OF WISCONSIN,
Respondents.

PETITION FOR LEAVE TO COMMENCE AN ORIGINAL ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF

TO: THE SUPREME COURT
STATE OF WISCONSIN AND
THE HONORABLE JUSTICES THEREOF

Your petitioner hereby respectfully prays this Honorable Court for leave to commence an original action for declaratory and injunctive relief to enforce state law with respect to a controversy, the facts of which follow.

1. Petitioner Bronson C. La Follette is the Attorney General of Wisconsin. He brings this action on behalf of the sovereign State of Wisconsin, pursuant to the authority of its Governor, *see* Exhibit A, and on behalf of the citizens of the State of Wisconsin, *see* sec. 165.25(1), Stats., to preserve the voting rights of Wisconsin citizens under state law.

2. Respondent Democratic Party of the United States of America (hereafter "National Party") is a voluntary

unincorporated association and a national political party whose purposes include: (a) nominating and assisting in the election of candidates to the office of President of the United States of America; (b) assisting state and local Democratic Party organizations in the election of their candidates and the education of their voters; and (c) working with Democratic public officials at all levels to achieve the objectives of the National Party. The National Party regularly does business in the State of Wisconsin by its agents, including the respondent Democratic Party of Wisconsin. Its business address is 1625 Massachusetts Avenue, N.W., Washington, D.C. 20036.

3. Respondent Democratic National Committee (hereafter "DNC") is an agent of the respondent National Party and has power to implement the National Party's purposes and rules including the power to impose requirements to be followed by state parties, including the respondent Democratic Party of Wisconsin, in respect to sending delegates to the quadrennial national convention to choose the National Party's candidate for the office of President of the United States. Its business address is the same as that of the respondent National Party.

4. Respondent Democratic Party of Wisconsin (hereafter "State Party") is a voluntary unincorporated association and a political party doing business in Wisconsin. It associates with the respondent National Party to achieve, among other things, the purposes described in paragraph 2 above. Its business address is 126 South Franklin, Madison, Wisconsin 53703.

5. Wisconsin has an Open Primary Law. Secs. 5.37(4); 5.60(8) (intro.), (c) and (d); and 8.12, Stats. This law provides that in presidential election years each voter in Wisconsin shall have an opportunity to express his or her preference in the primary election for a candidate for the office of President of the United States of America; that any voter may cast a private ballot without publicly declaring his or her party preference and without having that preference pulicly recorded; that political parties select their own delegates; that

the candidate for President who receives a plurality of the presidential primary vote in any district or in the state at large is entitled to control all the delegates representing such an area, but that as an alternative the chairperson of a state political party may have delegates pledged to candidates on the basis of the proportion of the presidential primary vote each candidate receives; and that each delegate to the party's national convention, however chosen by the political party involved, must execute an affidavit which pledges his or her vote in accordance with the outcome of the presidential primary vote and which states that he or she is affiliated with the political party which selected him or her as a delegate to its national political convention.

6. On June 9, 1978, the respondent DNC promulgated certain rules, attached hereto as Exhibit B. Under these rules, delegates selected by respondent State Party cannot be bound by the results of the State of Wisconsin Democratic presidential primary election for the sole reason that voters in the primary are not restricted to persons who publicly declare and record that their party preference is the State Party or the National Party.

7. The DNC rules conflict with the Open Primary Law in two respects. First, the rules restrict participation in the State of Wisconsin Democratic presidential primary to those voters who publicly declare and record their allegience to the State or National Democratic Party. Second, the rules measure candidate strength only by the votes of publicly declared and recorded Democrats; the votes of other Democrats and non-Democrats are disregarded.

8. Respondent State Party is required by its association with the National Party to comply with the terms of the DNC rules, Exhibit B. The State Party has decided to comply with DNC rules rather than Wisconsin law.

9. Respondents have instituted a caucus system to displace the open primary election.

10. Respondents know their plan is contrary to state law. Nevertheless, they are implementing an alternative party-run system to determine candidate strength, in violation of Wisconsin law, by establishing a caucus procedure which will select a slate of delegates, not bound by the results of the Wisconsin primary, to be seated at the 1980 convention of the National Party.

11. The Compliance Review Commission, an agent of the respondents National Party and DNC, has been delegated authority by the National Party and the DNC to determine whether state parties are in compliance with the DNC rules. It has determined that the State Party is not in compliance with the DNC rules if the State Party complies with the Open Primary Law.

12. Respondents' conduct, unless enjoined, will deny Wisconsin voters the benefits of the Open Primary Law, which include: giving voters an effective voice in selecting the President of the United States; attracting national candidates to Wisconsin to appeal to said voters, thereby securing an informed electorate; and securing to voters a right of privacy in respect to affiliation with parties and with candidates for the office of President of the United States of America.

13. The issue presented to this court requires a speedy and definitive resolution. This issue is of great public importance because it concerns state-granted voting rights; it concerns the state's use of political parties as its agents to effectuate voter choice for President; and it concerns the state's ability to secure to its citizens the benefits described in paragraph 12 hereof.

WHEREFORE, petitioner prays this Honorable Court for leave to file this petition and complaint so as to institute an original action in this Court to enforce state law; and for judgment declaring that sec. 8.12, Stats., requires that delegates selected by the State and National Parties from Wisconsin execute the pledge of sec. 8.12(3)(c)5., Stats., in accordance with state law and the results of the presidential preference

primary; and enjoining the respondents from conducting a caucus which has as a purpose to defeat the operation of the Open Primary Law; and enjoining respondents from recognizing any persons as Wisconsin delegates to the national convention in 1980 unless those persons have pledged to honor the outcome of the presidential primary as required by the Open Primary Law; and enjoining respondents from refusing to seat Wisconsin delegates at convention by reason of their compliance with the Open Primary Law.

Dated at Madison, Wisconsin, this 29th day of August, 1979.

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State of Wisconsin

In Supreme Court

STATE OF WISCONSIN EX REL.
BRONSON C. LA FOLLETTE,
Petitioner,

v.

DEMOCRATIC PARTY OF
THE UNITED STATES OF
AMERICA,
DEMOCRATIC NATIONAL
COMMITTEE, and
DEMOCRATIC PARTY OF
WISCONSIN,
Respondents.

ANSWER OF THE DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA AND THE DEMOCRATIC NATIONAL COMMITTEE

Pursuant to the Court's order dated September 12, 1979, Respondents Democratic Party of the United States of America and the Democratic National Committee (hereinafter collectively "National Democratic Party") answer the complaint filed by the State of Wisconsin by its Attorney General (hereinafter "State"). The numbered paragraphs in this Answer correspond to the numbered paragraphs in the State's "Petition for Leave to Commence An Original Action For Declaratory and Injunctive Relief" dated August 29, 1979, which the Court ruled stands as the complaint.

1. The National Democratic Party admits that Bronson C. La Follette is the Attorney General of Wisconsin and that he has brought this action on behalf of the State of Wisconsin pursuant to the authority of its Governor and on behalf of the

citizens of the State of Wisconsin. The balance of paragraph 1 of the State's Petition is argumentative and need not be answered.

2. The National Democratic Party admits the allegations in paragraph 2; except that it denies that it regularly does business in the State of Wisconsin by its agent and further denies that the Respondent Democratic Party of Wisconsin is an "agent" of the National Democratic Party in the sense that there exists a principal-agent relationship for all purposes under the law of Wisconsin or the District of Columbia.

3. The National Democratic Party admits that the Democratic National Committee ("DNC") has the same business address as the Democratic Party and that the DNC has the power to implement the National Party's purposes and rules; however, the characterization of the DNC as an "agent" of the Democratic Party of the United States of America in the sense that there exists a principal-agent relationship for all purposes is inappropriate. The National Democratic Party denies the other allegations in paragraph 3; however, the State party must comply with the terms of the Delegate Selection Rules to have its delegates seated at the 1980 National Democratic Convention and entitled to vote in the selection of the Party's Presidential and Vice-Presidential nominees.

4. The allegations in paragraph 4 do not apply to the National Democratic Party and, hence, need not be answered.

5. The National Democratic Party admits that Wisconsin has enacted Secs. 5.37(4); 5.60(8) (intro.), (c) and (d); and 8.12, Stats. Because the statutes speak for themselves, the National Democratic Party has no need to affirm or deny the balance of paragraph 5.

6. The National Democratic Party admits that the DNC promulgated the Rules attached as Exhibit B to the Petition on June 9, 1978. It denies the other allegations in paragraph 6; but states that under the Rules, participation in the delegate

selection process in binding primaries, conventions, or caucuses must be restricted to Democratic voters who publicly declare their party preference and have that preference publicly recorded. Furthermore, the Rules require that delegates to the 1980 Democratic National Convention be chosen so as to reflect fairly the division of preferences by those who participate in a Presidential nominating process.

7. The National Democratic Party denies the allegation in the first two sentences of paragraph 7. As to the last sentence, the National Democratic Party will recognize only those delegate votes at the 1980 Convention which are the product of delegate selection processes, whether in binding primaries, conventions, or caucuses, which are restricted to Democratic voters who publicly declare their party preference and have that preference publicly recorded.

8. The National Democratic Party denies the allegations in the first sentence of paragraph 8; however, the State party must comply with the terms of the Delegate Selection Rules to have its delegates seated at the 1980 National Democratic Convention and entitled to vote in the selection of the Party's Presidential and Vice-Presidential nominees. The National Democratic Party cannot affirm or deny the allegation in the second sentence.

9. The National Democratic Party cannot affirm or deny the allegation in paragraph 9.

10. The National Democratic Party does not have sufficient information to affirm or deny the allegations in paragraph 10.

11. The National Democratic Party admits the allegations in paragraph 11; except that it denies that the Compliance Review Commission is its agent for all purposes.

12. The allegations in paragraph 12 are argumentative and need not be answered.

13. The allegations in paragraph 13 are argumentative and need not be answered; except that the National Democratic Party agrees that the issues require a speedy resolution.

AFFIRMATIVE DEFENSE

The injunctions that the State seeks against the National Democratic Party may not be entered, because they would violate the First and Fourteenth Amendments of the United States Constitution.

Dated this 21st day of September, 1979.

Respectfully submitted,

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State of Wisconsin

In Supreme Court

STATE OF WISCONSIN EX REL.
BRONSON C. LA FOLLETTE
Petitioner,

vs.

Docket No.
79-1328-0A

DEMOCRATIC PARTY OF THE
UNITED STATES OF AMERICA,
THE DEMOCRATIC NATIONAL
COMMITTEE AND THE DEMOCRATIC
PARTY OF WISCONSIN,
Respondents.

ANSWER TO COMPLAINT OF BRONSON C. LA FOLLETTE AS ATTORNEY GENERAL AND CROSS CLAIM OF DEMOCRATIC PARTY OF WISCONSIN AGAINST ITS CO-RESPONDENTS DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA AND THE DEMOCRATIC NATIONAL COMMITTEE

The respondent DEMOCRATIC PARTY OF WISCONSIN by FRIEBERT & FINERTY, its attorneys, by ROBERT H. FRIEBERT, admits, denies and alleges as follows:

1. Admits Paragraph 1 of the Petition of the Attorney General.

2. Admits Paragraph 2 of said Petition and in addition thereto alleges that the National Party also does business in the State of Wisconsin through the respondent State Party by the periodic utilization of the State elections process including deriving the benefit of the services of certain officials of the State of Wisconsin including its Secretary of State and the entire election apparatus maintained by that office, the utilization of

voting machines and ballots located in the State of Wisconsin and the utilization of the services of local officials in both primary and general elections for purposes of tabulating the voting in such elections and compiling the results.

3. Admits Paragraph 3 of the Petition of the Attorney General and alleges in that regard that the rules of the DNC not only include the power to impose requirements to be followed by State Parties but in fact have conditioned the continued affiliation of the State Party with the National Party with respect to the process of nominating its candidates for President and Vice President of the United States upon compliance with all of its rules, including those referred to in the Complaint on file herein.

4. Admits the allegations contained in Paragraph 4 of the Attorney General's Complaint.

5. Admits the allegations contained in Paragraph 5 of the Attorney General's Complaint.

6. Admits the allegations contained in Paragraph 6 of the Attorney General's Complaint.

7. Admits the allegations contained in Paragraph 7 of the Attorney General's Complaint.

8. Admits that the respondent State Party is required by its association with the National Party to comply with the rules of the DNC to obtain recognition and seating of its delegates to the National Convention, but denies that the State Party has decided to comply with DNC rules rather than Wisconsin law; alleges that subsequent to the filing of the Petition by the Attorney General of the State of Wisconsin, the Administrative Committee of the Democratic Party of Wisconsin by advisory resolution adopted the following motion in an emergency meeting:

> "Move that the caucus plan as previously adopted be rejected by the Administrative Committee of the

> Democratic Party of Wisconsin; that we [the Administrative Committee] support the open primary; and that delegates to the 1980 National Democratic Convention be selected in the same manner as they were in 1976."

The State Party has always wished to comply with Wisconsin law while at the same time maintain its affiliation with the corespondents National Party and DNC.

9. Denies that the respondent State Party has instituted a caucus system to displace the open primary election and alleges in that regard that the Administrative Committee of the Democratic Party initially adopted a resolution authorizing the implementation of a caucus plan when the Wisconsin Legislature refused to close the open primary, as an alternative to obtaining delegates which it knew would be seated at the quadrennial national convention of the respondent National Party but since the institution of the above captioned action has reversed the original action of its Administrative Committee as set forth in Paragraph (8) above. The Administrative Committee of the Democratic Party of Wisconsin will be meeting on Saturday, September 29, 1979 for the purpose of formulating its official position with respect to the issues involved in these proceedings.

10. Admits that the caucus system, if utilized as required by the respondent DNC, would be contrary to State law but denies that the respondent State Party has done anything contrary to State law or has in the past or will in the future violate Wisconsin law in any fashion; alleges in that regard that the respondent State Party has made good faith efforts to attempt to comply with Wisconsin law while at the same time attempting to implement a system of alternative plans to satisfy the requirements of the respondent DNC for purposes of maintaining its affiliational ties with respondent DNC and respondent National Party so that the slate of delegates selected in compliance with Wisconsin law will be seated by the 1980

convention of the Democratic National Party; alleges that the respondent State Party will act in accordance with the rules of the DNC for purposes of maintaining its affiliational ties but will not in any manner cooperate with the DNC for purposes of circumventing the Wisconsin open primary law.

11. Admits the allegations contained in Paragraph 11 of the Attorney General's Complaint.

12. Admits the allegations contained in Paragraph 12 of the Attorney General's Complaint and affirmatively alleges that the respondent State Party is desirous of obeying Wisconsin law in all regards while at the same time preserving its affiliational ties with the respondent DNC and respondent National Party whose rules will not accept a slate of delegates elected under the Wisconsin open primary law.

13. Admits the allegations contained in Paragraph 13 of the Attorney General's Complaint and alleges that the dispute set forth in the Petition is ripe for determination because a resolution by this Court will conclude all issues in the dispute and that all parties necessary to a resolution of such issues are present before the Court; that further the respondent DNC has already notified the respondent State Party that if the State Party relies upon the open primary for delegate selection, such delegation if sent to the 1980 national convention will not be recognized and therefore candidates who may be considering entering their names in the Wisconsin Presidential Primary should be afforded ample opportunity to decide whether or not they will file petitions to have their names included in the primary pursuant to §8.12(1)(b) and candidates of national prominence who may be placed on the Wisconsin primary ballot by the Special Certification Committee authorized so to do under §8.12(1) will have an opportunity to make a meaningful decision as to whether or not they wish to disclaim their intention to become a candidate for the office of President of the United States in accordance with such section.

CROSS CLAIM OF RESPONDENT DEMOCRATIC PARTY OF WISCONSIN

And as and for a cross claim against the respondents National Party and DNC, the State Party alleges and shows to the Court as follows:

14. The respondent State Party is affiliated with the National Party.

15. That as a result of the aforesaid affiliation the State Party is subject to the rules of the National Party, which rules are enforced by the respondent DNC particularly with regard to the management of the National Convention of the National Party.

16. That the respondent State Party is also, through its citizen members and as a voluntary unincorporated association, subject to the laws of the State of Wisconsin including the Wisconsin open primary law which although not a penal statute designates the exclusive manner for the conduct of the Wisconsin open primary in the year in which electors for President and Vice President are to be elected.

17. That such law requires the respondent State Party, and all other political parties to determine the apportionment of delegates for candidates for President of the United States pursuant to and in accordance with the results of the Wisconsin open primary.

18. That the rules of the respondent DNC as presently formulated, for the selection and seating of delegates at the National Party convention, do not recognize the Wisconsin open primary and as such the National Party will only recognize a Wisconsin delegation to the National Convention of the National Party which is chosen in violation of the Wisconsin open primary law.

19. That the respondent State Party through its Administrative Committee recognizes and believes that the National Party as well as the State Party enjoy significant interests

pursuant to the First Amendment of the Constitution of the United States to regulate their own internal affairs without undue governmental intrusion, while at the same time the State Party also recognizes that the State of Wisconsin has a legitimate interest to insure that the elections, including the primary election, are conducted in a fair and orderly fashion and to implement this interest by regulating the participation of political parties in the electoral process when such regulations do not create a substantial burden upon the First Amendment rights of the parties.

20. That the respondent State Party through its Administrative Committee believes that the Wisconsin open primary law does not place a substantial or undue burden upon its First Amendment rights and further that the Wisconsin open primary law constitutes a legitimate exercise of the interest of the State of Wisconsin in regulating the orderly participation of political parties in the electoral process and is desirous of following the dictate of Wisconsin law without offending the regulations of the respondent DNC nor severing its affiliational ties with the respondent National Party nor otherwise effect or diminish the associational rights of the members of the State Party with the respondent National Party in connection with the 1980 National Convention and all preliminary proceedings and organizational meetings leading thereto or organized and held in connection therewith; but that such associational ties are jeopardized should the respondent State Party follow Wisconsin law as set forth in §8.12, Wis. Stats. and thereby be found by the respondent DNC to be in violation of regulations adopted for the seating of delegates for the participation in the National Convention; that the Democratic Party of Wisconsin intends to select and send a delegation to the National Convention chosen pursuant to the Wisconsin open primary law and that the National Party has stated that such a delegation will not be allowed to participate in the National Convention; that the matter of associational ties between the State Party and its members with the respondent National Party cannot be determined and properly protected in the claims set forth by the

petitioner since the primary interest of the petitioner is enforcing Wisconsin law for the benefit of all parties and not necessarily in protecting associational ties of the respondent State Party and its members with the respondent National Party.

WHEREFORE, the respondent State Party prays that in addition to such relief as may be granted upon the petition of the Attorney General of Wisconsin, this Court further declares that the Wisconsin open primary law does not intrude upon the associational freedoms of any of the respondents and that in the event there is a determination that the rules of the respondent DNC as presently formulated violate Wisconsin law the respondents National Party and DNC be additionally ordered and adjudged to recognize the delegation of the respondent State Party selected in accordance with Wisconsin law and that the members of respondent State Party be afforded the permission of the respondents National Party and DNC to participate in the entire nominating process associated with the 1980 Democratic National Committee together with such additional and other relief as may be just and proper under the circumstances.

Dated at Milwaukee, Wisconsin this 24th day of September, 1979.

FRIEBERT & FINERTY

By: _____

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State of Wisconsin

In Supreme Court

STATE OF WISCONSIN EX REL.
BRONSON C. LA FOLLETTE
Petitioner,

VS.

Docket No.
79-1328-OA

DEMOCRATIC PARTY OF THE
UNITED STATES OF AMERICA
THE DEMOCRATIC NATIONAL
COMMITTEE AND THE DEMOCRATIC
PARTY OF WISCONSIN,
Respondents.

ANSWER OF THE DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA AND THE DEMOCRATIC NATIONAL COMMITTEE TO THE CROSS CLAIM OF DEMOCRATIC PARTY OF WISCONSIN

Pursuant to Rule 809.84 and sec. 802.06(1), Stats., Respondents Democratic Party of the United States of America and the Democratic National Committee (hereinafter collectively "National Democratic Party") answer the cross claim filed by the Democratic Party of Wisconsin (hereinafter "State Party"). The numbered paragraphs in this Answer correspond to the numbered paragraphs in State Party's "Cross Claim", dated September 24, 1979.

14. The National Democratic Party denies that the State Party is affiliated with the National Party for all purposes. The State Party has specific rights and obligations under the Charter and the By-laws of the Democratic Party of the United States.

15. The National Democratic Party denies the allegations in paragraph 15; however, the State Party must comply with the

terms of the Delegate Selection Rules to have its delegates seated at the 1980 National Democratic Convention and entitled to vote in the selection of the Party's Presidential and Vice Presidential nominees.

16. The National Democratic Party admits that the State Party is a voluntary unincorporated association subject to the laws of the State of Wisconsin; as to the other allegations in paragraph 16, the Open Primary statute speaks for itself.

17. The allegations in paragraph 17 need not be answered, because the statute speaks for itself.

18. The National Democratic Party denies the allegations in paragraph 18, but states that under the Delegate Selection Rules, participation in the delegate selection process in binding primaries, conventions or caucuses must be restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. Furthermore, the Rules require that delegates to the 1980 Democratic National Convention be chosen so as to reflect fairly the division of preferences by those who participate in a Presidential nominating process.

19. The allegations in paragraph 19 are argumentative and need not be answered.

20. The allegations in paragraph 20 are argumentative and need not be answered.

AFFIRMATIVE DEFENSE

The declaratory and injunctive relief that the State Party seeks against the National Democratic Party may not be granted, because it would violate the First and Fourteenth Amendments of the United States Constitution.

Dated this 10th day of October, 1979.

Respectfully submitted,

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State of Wisconsin

In Supreme Court

STATE OF WISCONSIN ex rel.
BRONSON C. LA FOLLETTE,
Petitioner,

v.

Case No.
79-1328-OA

DEMOCRATIC PARTY, etc., et al.,
Respondents.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to this stipulation by their undersigned counsel, as follows:

A. The Parties.

1. Petitioner Bronson C. La Follette is the Attorney General of Wisconsin. He brings this action on behalf of the State of Wisconsin, pursuant to the authority of its Governor and on behalf of the citizens of the State of Wisconsin.

2. Respondent Democratic Party of the United States of America (hereafter "National Party") is a voluntary unincorporated association and a national political party whose purposes include: (a) nominating and assisting in the election of Democratic candidates for the offices of President and Vice President of the United States; (b) adopting and promoting statements of policy; (c) assisting state and local Democratic Party organizations in the election of their candidates and the education of their voters; (d) establishing standards and rules of procedure to afford all members of the Democratic Party full, timely, and equal opportunities to participate in decisions

concerning the selection of candidates, the formulation of policy, and the conduct of other party affairs, without prejudice on the basis of sex, race, age (if of voting age), religion, economic status, or ethnic origin, and, further, to promote fair campaign practices and the fair adjudication of disputes; and (e) working with Democratic public officials at all levels to achieve the objectives of the National Party.

3. Respondent Democratic National Committee (hereafter "DNC") has general responsibility for the affairs of the National Party between National Conventions, subject to the provisions of the Party's Charter and resolutions or other actions of the National Convention. Its responsibilities include issuing the Call to the National Convention, which establishes the delegate selection rules for the National Convention.

4. Respondent Democratic Party of Wisconsin (hereinafter "State Party") is a Wisconsin voluntary, unincorporated association organized as a political party to promote and preserve liberal, democratic government. To achieve these goals, the State Party promotes and supports candidates who are committed to the principles and objectives of the State and National Parties; conducts caucusses, meetings and a state convention; formulates policy; and promotes the full participation in its affairs without prejudice on the basis of sex, race, age, religion, economic status, or ethnic origin. The State Party is associated with the National Party and elects the Wisconsin members of the DNC.

B. The National Party's Delegate Selection Rules.

5. Article Two, Section 4 of the Charter of the Democratic Party of the United States ("Charter"), adopted in December, 1974, provides that:

> The National Convention shall be composed of delegates who are chosen through processes which (i) assure all Democratic voters full, timely and equal opportunity to participate and include affirma-

tive action programs toward that end, (ii) assure that delegations fairly reflect the division of preferences expressed by those who participate in the Presidential nominating process, (iii) exclude the use of the unit rule at any level, (iv) do not deny participation for failure to pay a cost, fee or poll tax, (v) restrict participation to Democrats only, and (vi) begin within the calendar year of the Convention.

6. The DNC adopted the Delegate Selection Rules for the 1980 Convention ("Rules") on June 9, 1978.

7. Rule 2 provides:

PARTICIPATION

A. Participation in the delegate selection process in primaries or caucuses shall be restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. Documentary evidence of a process which complies with this rule shall accompany all state Delegate Selection Plans upon their submission to the National Party. Such rules, when approved by the Compliance Review Commission and implemented shall constitute adequate provisions within the meaning of Section 9 of the 1972 Democratic National Convention mandate.

B. A Rule 20 exemption shall not be granted from Rule 2A requirements.

C. A State Party which is precluded by state statute from complying with this rule, shall adopt and implement an alternative party-run delegate selection system which complies with this rule.

D. State Parties shall take all feasible steps to encourage non-affiliated and new voters to register or enroll as Democrats and to provide simple, easy procedures through which they may do so.

E. No person shall be excluded from any stage of the delegate selection process for failure to pay a cost or fee.

8. Rule 12 provides in part:

FAIR REFLECTION OF PRESIDENTIAL PREFERENCES

A. The Call for the 1980 Democratic National Convention shall include provisions that assure that the delegates to the 1980 Democratic National Convention be chosen in a manner which fairly reflects the division of preferences by those who participate in the presidential nominating process in each state, territory and the District of Columbia.

B. At all stages of the delegate selection process, delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters or if there is no binding primary, the convention and caucus participants, except that preferences securing less than the applicable percentage of votes cast for the delegates to the National Convention shall not be awarded any delegates. . . . The CRC shall adopt regulations to prevent winner-take-all outcomes at the Congressional District or other smaller delegate selection unit. The CRC shall adopt regulations to govern the allocation of delegates in instances where no candidate reaches the applicable percentage.

C. At the level at which the National Convention delegates are selected, delegate selection systems which permit a plurality of votes to elect all of the delegates from that level shall not be used. Under no circumstances shall the use of single member delegate districts be permitted. State Democratic Parties shall ensure that District lines are not gerrymandered in order to discriminate against blacks or any other racial or ethnic minority. For purposes of these rules, plurality is defined as the most votes received by a candidate, whether or not that vote was the majority of the votes cast.

D. For the purpose of fairly reflecting the division of preferences, the nonbinding advisory presidential preference portion of primaries shall not be considered a step in the delegate selection process.

9. Rule 20 provides:

STATE LEGISLATIVE CHANGES

A. Wherever any part of any section contained in these rules conflicts with existing state laws, the State Party shall take provable positive steps to achieve legislative changes to bring the state law into compliance with the provisions of these rules.

B. Provable positive steps shall be taken in a timely fashion and shall include the drafting of corrective legislation; public endorsement by the State Party of such legislation; efforts to educate the public on the need for such legislation; active support for the legislation by the State Party lobbying state legislators, other public officials, Party officials and Party members; and encouraging consideration of the legislation by the appropriate legislative committees and bodies.

C. A State Party may be required to adopt and implement an alternative Party-run delegate selection system which does not conflict with these rules, regardless of any provable positive steps the state may have taken.

10. Pursuant to its authority under Article Three, Section 1 of the Charter, the DNC adopted the Final Call for the 1980 Democratic Convention ("the Call") on May 25, 1979, incorporating the Rules. The Call formally establishes the date of the Convention, the qualifications for delegates, the Convention's procedures, and other rules essential to the conduct of the Convention.

11. The Call provides that "delegates and alternates to the 1980 Democratic National Convention shall be selected in accordance with the Delegate Selection Rules." Compliance with said Rules is a condition the State Party must meet in order to participate in any respect at the national convention.

12. The Rules authorize the Compliance Review Commission ("CRC") to "review Delegate Selection Plans submitted by State Parties and approve or recommend changes in such plans."

13. On May 11, 1979, the Chairman of the State Party transmitted the Wisconsin Delegate Selection Plan for 1980 to the CRC.

14. On July 12, 1979, the CRC reviewed and considered the Wisconsin Delegate Selection Plan. The CRC determined that the Plan did not comply with the Rules because participation in the April 1 Wisconsin primary is not restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded, and because the State Party had not adopted and implemented an alternative Party-run delegate selection system.

15. On July 19, 1979, the CRC notified the Chairman of the State Party that it found the Plan did not meet the requirements of the Rules and the Call.

C. ***Past methods of delegate selection and changes required by DNC rules.***

16. In 1976 the Wisconsin Open Primary was utilized for the purpose of apportioning the number of delegates to the various candidates for President of the United States according to the percentage of the vote in each congressional district and the state at-large. Those delegates were bound to vote the preferences expressed in the primary. Wisconsin voters did not elect delegates and alternates to the National convention at the Wisconsin Open Primary. The selection of the actual delegates

was conducted at the caucusses attended by persons who publicly declared themselves to be Democrats and in complete compliance with the DNC rules and objectives with respect to the sex, race, age, religion, economic status, and ethnic origin of the delegates and alternates. Thus, in 1976, of the Wisconsin delegates and alternates to the Democratic National Convention, 58 delegates and 36 alternates were chosen at congressional district caucusses conducted by the State Party. Ten delegates and eight alternates were chosen as at-large delegates and alternates by the delegates and alternates chosen at the congressional district caucusses. Under the applicable Rules of the National Party in 1976, it was possible to obtain an exemption from Rule 2 of the DNC Rules which require that "participation in the delegate selection process be restricted to Democratic voters only" who publicly declare their party preference and have that preference publicly recorded. The State Party obtained such an exemption in 1976.

17. On June 9, 1978, the DNC adopted Delegate Selection Rules including Rule 2B, which is quoted in Paragraph 7 of this stipulation. Thus, the 1980 Rules preclude obtaining an exemption from Rule 2A. The effect of this change is that a Wisconsin delegation which is apportioned to candidates on the basis of the results of the Wisconsin Open Primary will not be seated. The only Wisconsin delegation which will be seated is one which complies with all of the National Party's Rules including Rule 2A.

18. The essential difference between the process under the Open Primary and the DNC's Delegate Selection Rules concerns who participates in the determination of what proportion of the delegates are allotted to the respective candidates. Under the Open Primary Law, nominee preference and apportionment is measured by the results of the Open Primary in the spring. Voters can vote in the primary without publicly declaring their party preference. Under the DNC rules, the State Party may determine presidential preference through a primary, at a Convention or in caucusses. The DNC does not

mandate which of these systems must be used. However, participation in the process of determining preference as to the Democratic nominee must be limited to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. If the State does not change its law so that only voters who publicly declare Democratic party preference and have that preference publicly recorded may participate in the binding Democratic primary, then the State Party must adopt and implement an alternative Party-run system which complies with the Rules.

19. Under *both* the Open Primary Law and the alternative caucus plan pursuant to the rules of the DNC: (1) the process for selecting the delegates is under the control and direction of the State Party; (2) only Democrats and those who subscribe to the general progressive principles of the State Party may participate in selecting delegates; and (3) a committed delegation results, *i.e.,* delegates to the National Convention are bound to support a particular candidate.

The parties stipulate to the authenticity of exhibits one through fourteen attached hereto.

Charles D. Hoornstra
Assistant Attorney General
On behalf of petitioner

Robert H. Friebert
Friebert & Finerty
On behalf of Democratic Party of Wisconsin

Ronald D. Eastman
Cadwalader, Wickersham & Taft
On behalf of Democratic Party of the United States of America and Democratic National Committee

MANDATE FOR REFORM

A REPORT OF THE

COMMISSION ON PARTY STRUCTURE

AND

DELEGATE SELECTION

TO THE

DEMOCRATIC NATIONAL COMMITTEE

[38] THE OFFICIAL GUIDELINES OF THE COMMISSION

[39] PART II—THE GUIDELINES

[47] C-3 Open and closed processes

The Commission believes that Party membership, and hence opportunity to participate in the delegate selection process, must be open to all persons who wish to be Democrats and who are not already members of another political party; conversely, a full opportunity for all Democrats to participate is diluted if members of other political parties are allowed to participate in the selection of delegates to the Democratic National Convention.

DEMOCRATS ALL

A REPORT OF THE COMMISSION ON DELEGATE SELECTION AND PARTY STRUCTURE

[1] TO: Democratic National Committee Members & Members of the Democratic Party

The Democratic Party has been, and is today, the party of the *People.* It is the Party that has traditionally welcomed the support of the newly enfranchised, the upwardly striving and the progressive voters — women, immigrants, minority groups, old and young, workers and scholars. It is the Party of the working people in the United States — blue collar, white collar and no collar.

And it is the Party that has continually reformed itself it is an open Party which strives to make democracy, and our Republic, a vigorous living reality.

The National Democratic Convention, called every four years to elect the Party's standard bearer and set forth its platform, is a great source of institutional strength. Its purpose, once a nominee and platform are selected, is to weld a diversity of state organizations, special interest groups and rank and file Democrats into a broad coalition which when it puts forth its best effort elects the president of the United States.

Because of our commitment to basic democracy and an open Party we have spent this past year searching for the best way to insure the opportunity for every Democrat to participate in the delegate selection and nominating process.

And so we present to you the rules of the 1973 Delegate Selection Commission of the Democratic National Committee. We have written these rules with the reminders: are they fair;

are they clear; and can they be implemented? We have travelled the country and asked party leaders, elected officials and rank and file Democrats for their advice and suggestions. We have listened to everyone who had anything to suggest about the rules.

The Commission faced a difficult task in developing rules that would be oriented to party unity and coalition building among its pluralistic constituencies. I think the first phase of the Commission's work has been tremendously successful, but another major task lies ahead. Democrats across the country must understand the new rules and why it is important to participate in the delegate selection process.

[2] The new rules essentially guarantee *fairness, ease of participation, information* and *representation* in these specific ways:

First, the rules assure that information explaining how, when and where to participate will be made available:

—party rules must be adopted and distributed which clearly explain the delegate selection process by January 1 or 90 days ahead of time.

—times, dates, and places of party meetings must be effectively publicized.

—the preferences of candidates for delegate must be publicized so that Democrats can vote on an informed basis.

Secondly, ease of participation is assured:

—party meetings must be held in convenient public places and begin and end at reasonable hours.

—no costs or fees may be required to participate.

—if you attend a party meeting and must leave before the meeting is over and no alternate for you is present, you may leave a proxy vote with another participant.

—state parties must take affirmative action to reach out to all Democrats to involve them in the delegate selection process and all Party affairs, with particular attention to minorities, native Americans, women & other traditionally under-represented groups.

Third, fairness must be guaranteed:

—participation must be restricted to Democrats.

—business may not be conducted without 40% of the members of delegates present.

—the unit rules may not be imposed on any delegates.

—National Convention delegates must be distributed within the state according to 1 of 4 formulas based on different measures of Democratic strength.

—at least 75% of the National Convention delegates must be elected from units no larger than a Congressional District, thereby bringing the process closer to the grass roots.

—presidential candidates have the right to approve delegate-candidates running on behalf of their candidacy.

—no delegate may be bound to vote against his or her expressed preference.

—[3] no slate of delegates may receive preferential treatment or be designated as the "official" slate.

—discrimination on any basis is prohibited.

—a Compliance Review Commission will approve state Affirmative Action and Delegate Selection plans to assure they meet the requirements of the rules and are implemented.

Fourth, representation and *responsiveness* was assured:

—all steps in the delegate selection process, except the election of state committee members, must take place in 1976.

—elected delegates must fairly reflect the expressed preferences of the voters in a binding primary or the participants in a caucus or convention, if the preferences are supported by at least 10% of the voters.

—the publicly elected delegates or the state committee in primary states may select 25% of the delegation at large to assure representation of public and party officials, and previously under-represented Democratic constituencies.

—alternates to replace delegates must be of the same presidential preference and from the same political subdivision, if possible, of the delegate being replaced.

We are also submitting the documents which have formed the basis for our decisions and aided us in our deliberations. These constitute the legislative history of the Commission's work.

The 74 members of the Commission are a microcosim of all the elements of the Democratic Party — and we have welded together a true Democratic coalition. We have worked together for almost a year and we have arrived at a report, unanimously accepted.

In accord with our mandate from the 1972 Democratic National Convention we hereby present our report to the Democratic National Committee.

On behalf of the Commission I would like to extend my personal thanks for your advice, support and cooperation.

Sincerely,

Barbara Mikulski
Chairwoman
Commission on Delegate Selection
and Party Structure

* * * *

[8] WHERE DID WE COME FROM?

* * * *

[9] The McGovern-Fraser Commission took important steps to eliminate these inadequacies in the delegate selection process. Perhaps the two most fundamental underpinnings of the McGovern-Fraser Rules, concepts which the National Democratic Party continues to embrace, were 1) that all Democrats should be treated as equals and none should be granted special voting rights or decision making privileges, and 2) that a policy of non-discrimination alone, without an effective outreach effort, would be insufficient to overcome the historical, cultural and psychological barriers to full participation that face groups long closed out of the decision-making process of American politics because of their race, sex, or other irrational criteria. This "democratization" of the delegate selection process was reinforced by 18 guidelines governing permissible costs and fees, the existence of readily available party rules, the accessibility of voter registration machinery, the abolition of the unit rule, fair intrastate apportionment of delegates, the prohibition of unfair advantages sometimes accorded to delegate slates, adequate notice of delegate selection processes, and timeliness of the selection of National Convention delegates.

The 1972 Convention also discovered that the McGovern-Fraser Rules did not address the serious questions raised by "unfaithful" delegates, proportional representation, and cross-over voting — issues later dealt with by the 1972 Conventions' Rules Committee and referred to this Commission for implementation.

* * * *

[15] REPORT OF THE COMMISSION ON DELEGATE SELECTION AND PARTY STRUCTURE

ADOPTED UNANIMOUSLY

October 27, 1973

2. DEMOCRATIC PARTICIPATION

A. State Parties must take all feasible steps to restrict participation in the delegate selection process to Democratic voters only. Such steps shall be included in proposed party rules submitted to the Compliance Review Commission of the National Democratic Party. Such rules, when approved by the Compliance Review Commission and implemented shall constitute adequate provisions within the meaning of Section 9 of the 1972 Democratic National Convention mandate.

B. State Parties shall take all feasible steps to encourage non-affiliated and new voters to register or enroll as Democrats and to provide simple, easy procedures through which they may do so.

DELEGATE SELECTION

RULES FOR THE

1976

DEMOCRATIC NATIONAL

CONVENTION

[1] 2. DEMOCRATIC PARTICIPATION

A. State Parties must take all feasible steps to restrict participation in the delegate selection process to Democratic voters only. Such steps shall be included in proposed party rules submitted to the Compliance Review Commission of the National Democratic Party. Such rules, when approved by the Compliance Review Commission and implemented shall constitute adequate provisions within the meaning [2] of Section 9 of the 1972 Democratic National Convention mandate.

B. State Parties shall take all feasible steps to encourage non-affiliated and new voters to register or enroll as Democrats and to provide simple, easy procedures through which they may do so.

OPENNESS, PARTICIPATION AND PARTY BUILDING: REFORMS FOR A STRONGER DEMOCRATIC PARTY

PART I

DISCUSSION OF THE PRESIDENTIAL NOMINATION PROCESS AND RECOMMENDATIONS OF THE COMMISSION ON PRESIDENTIAL NOMINATION AND PARTY STRUCTURE

[1] Section 1. History of Presidential Nominations

The United States is one of the very few modern democratic governments that now uses or has ever used the direct primary to make nominations for elective office. Use of the direct primary makes our nomination system unique among the nominating systems of other parties for implicit in its use is a very sweeping definition of party membership. Most of the world's political parties have specific criteria for party membership and nomination processes are limited to leaders of the parties. American political parties tend to define party membership much more broadly. To participate in the nomination process, either as a candidate or as a voter, a person need never have worked for a party, paid dues to a party, or in some states, even been publicly identified with a party.

Presidential preference primaries are important for reasons beyond their uniqueness among other nominating systems. Between 1905 and 1976 the number of primaries increased so much that in 1976 approximately three quarters of the Democratic National Convention delegates were selected in primary states.

The costs of holding these primaries are substantial. Even before January 1976 presidential candidates spent more than

$16.5 million. By the end of the process $72 million was spent, $24.2 million of which came from federal matching funds. Election officials spent at least an additional $22.6 million to administer primaries in their states.[1]

Because of the proliferation of primaries and their rising costs, the Commission on Presidential Nomination and Party Structure was mandated to investigate their role in the presidential nomination system of the Democratic Party.

Growth of Presidential Primaries

Presidential primaries were not always the center piece of presidential nomination in the United States. In the early years of the Republic, Congressmen chose the presidential nominees of their party. Use of the congressional caucus to make party nominations continued to the early 1820's when a number of reform Republicans persuaded their Congressmen to denounce "King Caucus" and to boycott the caucus called for 1824. The reformers succeeded and the caucus nominee of that year was soundly defeated.

Presidential nomination by congressional caucus was eventually replaced by the national nominating convention. The first national conventions were held by the Antimason Party and by the National Republican Party in 1831. In 1832, the Democratic Republicans held a nominating convention in order to drop John C. Calhoun (who had many friends [2] in Congress) from the Andrew Jackson ticket. From 1832 to the present the nominating convention has persisted, despite the rise and fall of political parties as the mechanism for presidential nomination.

Nevertheless, within the structure of the nominating convention there has been a series of important reforms so that the

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[1] See Kimball W. Brace, *The 1976 Presidential Primaries: An Analysis of How Many People Participated and How Much Money was Spent.* (Washington, D.C., Commission on Presidential Nomination and Party Structure, May 1977).

nominating conventions of today look very different from the nominating conventions of the 1830's or even the 1940's.

Prior to 1905 there were no mandatory presidential primaries. Delegates were chosen in gatherings of local and state party leaders. Between 1905 and 1925 states began adopting presidential primaries, a Progressive Era innovation developed to circumvent party organizations. After 1925 primaries declined somewhat in importance in the nomination process as it became clear that, for a variety of reasons to be discussed later, they had little effect on convention outcomes. In 1968 the number of primaries increased once again as did their importance in the nominating process.

There are two explanations for periodic public pressure to increase the use of presidential primaries. The first is political; people have wanted to institute primaries after periods of intense intra-party conflict. The second is philosophical; people have justified the institution of primaries by arguing that parties as organizations are undemocratic and that primaries are more representative of the popular will.

People have wanted to institute primaries when there have been factional divisions within the party leaving one or more factions displeased with the outcome of the convention. It is no coincidence that the number of proposals in Congress for some sort of national primary system increased following extremely divisive conventions. For instance, in 1912 Progressive Republicans led by Teddy Roosevelt hotly contested the renomination of William Howard Taft. Roosevelt won 9 out of 12 primaries, including some major states like Illinois, Pennsylvania, Ohio and California. Taft won one primary by a narrow margin. Nevertheless, Taft won renomination at the Republican Convention, to the consternation of many Republicans who then bolted for the Progressive Party and contributed to the ensuing loss to Woodrow Wilson.

During and after the turbulent Republican primary of 1912, Congress considered 17 proposals for some sort of

federally regulated primary. While no action was taken on the federal level, on the state level more and more states adopted the direct primary along with other progressive reforms that were supposed to end "boss" rule and make the candidates responsive to the people alone. By 1916, 26 states had some form of presidential primary. Then, as now, people predicted that the national convention would [3] become, like the electoral college, a mere mechanism for recording decisions arrived at by the electorate.

However, in the period following the Progressive Era, interest in the Progressive's reforms faded away. Some states repealed their presidential primary laws. Repeal of presidential primaries occurred because party leaders felt that they reduced their power, because the costs of holding them were high, and because they were ultimately not decisive in the nomination of the presidential candidate. Voter participation in primaries was low, and leading candidates frequently did not enter the primaries, preferring instead to bargain with the favorite sons who ran in the primary and then controlled their delegates.[2]

A description of the presidential nomination process during the period prior to 1968 is summarized by the famous scholar of American politics, V.O. Key. He describes the then prevalent convention system of delegate selection as follows:

> Ordinarily the convention procedure does not permit extensive participation by the rank and file of the party in the choice of delegates. Though the convention may not be bossed, selection of delegates becomes a matter handled almost exclusively by the party professionals. Yet, on the whole the convention processes produce delegations representative of the general tenor of sentiment of the party in the state. The principal difficulties with selection by

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[2] See James W. Davis, *Springboard to the White House: Presidential Primaries, How They are Fought and Won.* (New York, Thomas Y. Crowell, 1967).

> convention seem to occur when the convention members really have no constituencies and are, perhaps for that reason, unable to produce a decision acceptable to all concerned.[3]

By 1952 only 16 states had presidential primaries. Senator Kefauver won 12 of those primaries but the Democratic nomination went to Adlai Stevenson in a convention widely considered controlled by Truman. Again, intense intra-party rivalry occurred. Charges of "bossism" were heard from all sides. This resulted in the introduction of 36 presidential primary proposals in the subsequent Congress.

In the years between 1967 and 1972 the Democratic Party was, once again, seriously divided. Dissent over the war in Vietnam and over social issues fragmented the Party. The delegate selection processes in effect in 1968 failed to register the full extent of dissent within the Party. One response to the inability of the Party to deal with the divisions within was a resurgence of interest in presidential primaries. In the two Congresses surrounding the 1968 elections, 48 presidential primary proposals were introduced. In a parallel development within the [4] states, six more states enacted presidential primary laws between 1968 and 1972, bringing the total from 17 to 23.

Eight more states adopted primaries before 1976, bringing the total to 31 and making the 1976 nomination process more dominated by primaries than any other primary season in our history. In 1976 about three quarters of the Democratic Party's convention delegates were apportioned among primary states.

Thus, the first way to understand the evolution of the presidential primary as the most important component of the nomination system is to view it as a response to severe strains within the Party which no one managed to compromise away

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[3] V.O. Key, Jr., *Politics, Parties and Pressure Groups,* (New York, Thomas Y. Crowell Co., 1964), p. 408.

during the season prior to the convention. As a result of these conflicts many people blamed the nomination process and sought to change the structure.

The second explanation for the increasing use of the direct primary is philosophical. Austin Ranney has identified a strong anti-party strain in American political thought and practice. Americans, he says, have a tendency to:

> . . . deal uneasily with the necessities of partisan political organization because of their widespread belief that political parties are, at best, unavoidable evils whose propensities for divisiveness, oligarchy, and corruption must be closely watched and sternly controlled.[4]

The anti-party line of thought appeared in the infancy of the American Republic. Men like Alexander Hamilton, who saw parties or factions as the source of corruption of the English political system, urged as an advantage of a "firm union" the opportunity to supress factionalism.[5]

In the Progressive Era reformers sought to end bossism and corruption in the political parties, not by building new parties, but by destroying party organizations that controlled the nomination process. Robert LaFollette, the father of the modern presidential primary, justified the primary in the following way:

> No longer will there stand between the voter and the official a political machine with a complicated system of caucuses and conventions, by the manipulation of which it thwarts the will of the voter and rules of official conduct. . . .[6]

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[4] Austin Ranney, *Curing the Mischiefs of Faction, Party Reform in America* (Berkeley, University of California Press, 1975), p. 22.

[5] See Alexander Hamilton, Federalist Paper #9.

[6] Quoted in Ranney, op. cit., p. 124.

The reformers understood that removing the nominating power from a party organization rendered the organization almost without purpose.

Another Progressive Era reformer, George W. Norris, assessed the consequences of a direct primary as follows:

> [5] It does lessen allegiance to party and increase individual independence, both as to the public official and as to the private citizen. It takes away the power of the party leader or boss and places the responsibility for control upon the individual. It lessens party spirit and decreases partisanship. These are some of the reasons why the primary should be retained and extended.[7]

The Reform Movement, 1964-1976

In the late sixties and early seventies reformers in the Democratic Party focused on making the Party more open. While some expressed viewpoints reminiscent of the anti-party rhetoric of the Progressive Era, other reformers of the late sixties envisioned party-building which sought maximum participation by all rank and file Democrats.[8]

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[7] Quoted in Ranney, ibid., p. 125.

[8] An example of some anti-party rhetoric from the 1960's is provided below:

> Mixner: And so they found a new game. All right, so we won't put our token opposition on our delegation if we can't control them. We'll make a slate, we have a 51%, we'll take all, we'll take 100% to the next step. Mr. Chairman, every time you let these party people have any role in the process, they'll find some way to cheat you. If it's not Winner-Take-All, it's slating, or its manipulation of some other rule. And boy can they deal at the convention, if you let them get to the convention, with the power they have over winner-take-all. If there's ever backroom deals, they're going to be made after the second and third ballot,

(*footnote continues*)

The 1968 Democratic National Convention was perceived as unrepresentative of the Democratic Party's rank and file membership on two dimensions: demographics and candidate preference. Blacks, whose demands for representation began with the Mississippi challenge at the 1964 Convention, were represented in numbers far below their presence in the electorate. Additionally, their numbers did not reflect their political importance as heavily Democratic voters. Women were just beginning to organize for more representation in the Party and they joined blacks in demanding greater representation in Party affairs.

The anti-war activists who supported Gene McCarthy for the nomination also complained that, due to the delegate selection rules in effect, the presidential preferences of large numbers of Democrats could not be translated into delegate strength.

The problems the Party faced at the 1968 Convention resulted in strong support for party reform of delegate selection.

(*footnote continued*)

> by these party people. It'll be, 'I'll deliver you my delegation for this and this and this'. It's happened and it will continue to happen. You've got to get these party people out of the process, you've got to, at least you've got to have a system which is so open that they get overwhelmed. I think most reformers now agree that you cannot allow these regular party people to have any control over anything, and still hope that you will have democracy in the parties.
>
> Mitchell: Now David, I think you're being a bit harsh here.
>
> Mixner: There may be a few decent people, like you, George, but let me just say it again. Either you get the party people out of the process of picking delegates, or else you won't have any real democracy. Or else you'll just have more explosions, like Chicago.
>
> McGovern-Fraser Commission transcripts November 19-20, 1969.*

* There is a minority report to this footnote.

Under the chairmanship of George McGovern and later Donald Fraser, a Commission was established to review delegate selection rules for 1968 and to establish guidelines for the 1972 Convention. They concluded that at the 1968 Convention:

> . . . meaningful participation of Democratic voters in the choice of their presidential nominee was often difficult or costly, sometimes completely illusory, and, in not a few instances, impossible. . . .[9]

The reforms of the Commission sought to insure that all interested persons could compete equally for delegate slots at the grassroots level. Party leaders were to have [6] no more influence on delegate selection than any other Democrat.

A set of guidelines were adopted to insure that, in states that had conventions, rank and file Democrats could not be excluded from the process. These guidelines called for publication and distribution of rules governing the caucuses; required states to differentiate delegate selection from other party business; required state parties to select delegates in a timely manner; and encouraged notification of delegates' presidential preferences. This changed the old method of delegate selection considerably.

Another set of reforms encouraged accurate representation of the Democratic electorate and of the voters' candidate preferences. One guideline advocated representation of minorities, women and youth ". . . in reasonable relationship to their presence in the population of the state." A footnote stated ". . . this is not to be accomplished by the mandatory imposition of quotas", nevertheless some people viewed the 1972 system as not distinct from a quota system.[10]

The Charter Convention of 1974 and the Mikulski Commission, which wrote the delegate selection rules for 1976,

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[9] Commission on Party Structure and Delegate Selection, *Mandate for Reform.* (Washington, D.C., Democratic National Committee, 1970), p. 10.

[10] Ibid., footnote #7.

subsequently rejected the use of quotas to achieve minority representation. However, the Mikulski Commission mandated the states to create and implement extensive Affirmative Action Plans to encourage minority and women's participation.

A related McGovern-Fraser guideline encouraged states to adopt procedures that allowed for "... fair representation of minority views on presidential candidates." California's winner-take-all primary was challenged at the 1972 Convention on the grounds that it violated this guideline. Although the 1972 Convention allowed the California delegation to be seated, it mandated the next rules commission to ban winner-take-all systems at all levels at the next convention.

The next rules commission, the Mikulski Commission, wrote Rule 11. This rule required fair reflection of presidential preferences at the 1976 Convention. There was a provision, however, which allowed states which elected their delegates in direct delegate selection primaries to keep their systems. Since this much criticized method of delegate selection sometimes produced the winner-take-all outcomes at the Congressional District or Legislative District level, it became known as the "loophole" in the fair reflection rule.

The 1976 Rules Committee responded to pressure to close the "loophole" by adopting Section 9 of its report to the Convention. It instructed the current Commission to write rules that eliminate systems which permit "... a plurality of votes to elect all of the delegates from any [7] given district."

The Debate on Presidential Nominations

Much of the recent and not so recent debate over presidential nominations is a debate over the following question: Who should participate in selecting the presidential nominee of the Party?

Some define the Party as those activists and elected party officials that are involved with Party affairs year after year.

They argue that these people should be well represented in the selection of a presidential nominee since it is their business to know and represent the electorate and to win elections.

Reformers tend to define the Party as those voters who have enough of a psychological commitment to the Party to call themselves Democrats. They feel that it is most important to guarantee maximum grass roots involvement in the presidential nomination process.

Since so much attention has been focused on the question: Who should participate in presidential nomination?, it is helpful to look at three key groups of relevant actors in the nomination process—primary voters, convention delegates, and state party organizations. The following three sections address themselves to each group's participation in presidential nomination.

[10] Section 2. THE PRIMARY AND CAUCUS PARTICIPANTS

Introduction

This Section will examine primary and caucus participants and compare those two groups, as best as possible, to the Democratic general election electorate. As will be demonstrated, neither system is fully representative of the Democratic electorate nor is one system more representative than the other.

Primary Participants

With the primaries responsible for the determination of presidential preference of nearly 75% of the convention delegates, there is little doubt that they are now the most important components of the nomination process. The widespread assumption has been that this is as it should be since the primaries are the most representative element of our nominating system. This assumption warrants examination; for while the presidential primary involves the greatest number of

people in the selection of a presidential nominee, the primary electorate may be a biased reflection of rank and file Democrats.

This bias can be created because turnout in primaries is consistently lower than turnout in the general election. Although primary turnout has been increasing steadily since 1968, in 1976 primary turnout was still lower than turnout in the general election; 28.9% of the voting age population turned out in primaries and 53.3% of the voting age population turned out in the general election in competitive primary states.[1]

One of the most consistent findings in research on voter turnout is that people with higher socio-economic status turn out to vote much more regularly than other groups in the population. They are more likely to read newspapers, watch TV news and follow political events, and they are less likely to be deterred from voting by restrictive registration laws.[2]

For those who do not have the time and/or skills to follow politics, the party label has been the most convenient tool allowing people who do not know whom to vote for to make a choice.[3]

In primaries there is, obviously, no party label to help voters vote who have not paid much attention to politics. Thus,

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[1] Austin Ranney, *Participation in American Presidential Nominations,* 1976 (Washington, D.C. American Enterprise Institute for Public Policy Research, 1977), p. 25.

[2] See Angus Campbell et. al., *The American Voter,* (New York, John Wiley and Sons, 1962). Also see Steven J. Rosenstone and Raymond E. Wolfinger, "The Effects of Registration Laws on Voter Turnout". Paper presented at the 1976 Annual Meeting of the American Political Science Association. (Chicago, Illinois, September 1976).

[3] See Angus Campbell, et. al. Ibid. Also, Anthony Downs, *An Economic Theory of Democracy,* (New York, Harper & Row, 1962).

it comes as no surprise that turnout in all kinds of primaries is consistently lower than turnout in general elections.[4]

Since voter turnout is so highly related to social class variables it follows that the primary electorate will be drawn from the more highly educated and middle class [11] portions of the population.

James Lengle studied the 1968 and 1972 California primary and electorates.[5] Using Field's 1968 and 1972 post-presidential primary surveys, he compared primary voters with the entire Democratic Party membership; defined as all Democratic Party identifiers. Looking at education, income, social class, occupation and race for both years he found that on each measure the primary electorate was unrepresentative of the Democratic rank and file. For example, people with college degrees and advanced degrees comprised a much larger share of the primary electorate than of the general electorate. Likewise, people in highly paid white collar jobs comprised a larger share of the primary, rather than general, electorate. Finally, minorities, especially Asians and Hispanics, were clearly underrepresented in primary electorates in 1968 and 1972. Blacks were seriously underrepresented in 1972.

For 1976 we took a sample of registered, likely, general election voters from Cambridge Survey Research polls and compared that group to a New York Times/CBS sample of

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[4] See V.O. Key, Jr. *American State Politics: An Introduction* (New York, Alfred A. Knopf, 1956) on gubernatorial and congressional primaries; Arthur C. Wolfe, *The Direct Primary in American Politics,* (unpublished Ph.D thesis in political science, University of Michigan, 1966) on gubernatorial and congressional primaries; Julian F. S. Foster, *Congressional Primaries,* (unpublished Ph.D. thesis, University of California, Los Angeles, 1963) on congressional primaries; Austin Ranney, "Parties in State Politics" in Herbert Jacob and Kenneth Vines, (eds.) *Politics in the American States: A Comparative Analysis,* 2nd ed. (Boston, Little Brown, 1971) on gubernatorial and Senate primaries.

[5] James P. Lengle, "Demographic Representation in California's 1972 and 1968 Democratic Presidential Primaries." Paper prepared for delivery at Annual Meeting of the American Political Science Association, (Chicago, Illinois, September, 1976).

primary voters.[6] Since the sample of general election voters consists of actual registered Democrats who have been voting recently, it is already a special subsection of all Democratic identifiers. Nevertheless, the differences between primary voters and general election voters, while not as great as in the 1972 study, are still large. For instance, in all the states examined for 1976 there were far fewer Democratic primary voters with less than a high school education than there were general election Democratic voters.

TABLE 1

Percentage of Voters in Democratic Primary Electorate and in Democratic General Election Electorate with Less Than a High School Education.

	Primary	General
California	11	27
Florida	13	30
Illinois	19	34
Indiana	21	40
Massachusetts	12	19
Michigan	20	30
New Hampshire	11	18
New Jersey	12	41
New York	15	31
Ohio	15	32
Oregon	19	18
Pennsylvania	17	32
Wisconsin	18	25

[6] Thanks to Patrick Caddell, Cambridge Survey Research and Professor Gary Orren, Harvard University, for making the data available to the Commission.

[12] At the other end of the education scale, college educated people were consistently overrepresented in the primary electorates.

TABLE 2

Percentage of Voters in the Democratic Primary Electorate and in the Democratic General Election Electorate with a College Degree or Beyond.

	Primary	General
California	34	17
Florida	28	17
Illinois	23	6
Indiana	13	6
Massachusetts	36	22
Michigan	20	10
New Hampshire	38	18
New Jersey	35	14
New York	32	19
Ohio	25	10
Oregon	23	20
Pennsylvania	23	15
Wisconsin	22	15

People earning $20,000 per year or more also tended to be overrepresented in the primary electorate.

TABLE 3

Percentage of Voters in the Democratic Primary Electorate and in the General Election Electorate Who Earn More Than $20,000 Per Year.

	Primary	General
California	35	23
Florida	26	16
Illinois	25	21
Indiana	17	11
Massachusetts	24	24
Michigan	16	17
New Hampshire	15	14
New Jersey	37	19
New York	32	16
Ohio	23	17
Oregon	15	23
Pennsylvania	20	9
Wisconsin	no data	no data

[13] Black people are under-represented in the primary electorate.

TABLE 4

Percentage of Black Voters in the Democratic Primary Electorate and in the Democratic General Election Electorate.

	Primary	General
California	12	15
Florida	8	14
Illinois	15	16
Indiana	10	11
Massachusetts	2	3
Michigan	11	22
New Hampshire	—	—
New Jersey	17	26
New York	15	20
Ohio	11	17
Oregon	no data	no data
Pennsylvania	8	15
Wisconsin	3	7

People over 65 years of age are underrepresented in the primary electorate.[7]

[7] Unfortunately it was impossible to show data on the participation of young people in each electorate since the categories in the two surveys could not be matched.

TABLE 5

Percentage of Voters Over 65 in the Democratic Primary Electorate and in the Democratic General Election Electorate.

	Primary	General
California	9	19
Florida	23	28
Illinois	8	17
Indiana	7	24
Massachusetts	10	18
Michigan	11	17
New Hampshire	6	13
New Jersey	9	16
New York	15	14
Ohio	7	19
Oregon	23	13
Pennsylvania	9	15
Wisconsin	13	19

[14] While the primary electorate has a demographic bias towards the middle and upper middle classes does it also have an ideological bias? This seems to depend on the nature of the election race and the state. For instance, in 1968 Austin Ranney found that, on the salient issue of the war in Vietnam, New Hampshire primary voters tended to be more hawkish than non-voters.[8] In 1972 in California, Lengle found that those Democrats who turned out to vote in primaries were much more liberal than Democrats who did not vote in the primaries.[9]

Limited evidence on 1976 suggests that while there may be a slight tendency for conservatives to be underrepresented in

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[8] See Austin Ranney, "Turnout and Representation in Presidential Primary Elections", *American Political Science Review,* March 1972, p. 29.

[9] Lengle, "Demographic Representation in California's 1972 and 1968 Democratic Presidential Primaries."

the Democratic primary electorate (due to the fact that the overrepresented, college educated tend to be more liberal), the two electorates may not be as distant as they were in 1972. For instance, the Wisconsin primary electorate had fewer people classifying themselves as conservatives but about the same number classifying themselves as liberals in the general electorate.[10]

A third dimension on which it is possible to compare Democratic primary voters with Democratic general election voters is candidate preference. Lengle found stronger support for Gene McCarthy among the educated (and overrepresented) segment of the Democratic Party and negligible support for McCarthy among Democrats who had a high school education or less. Likewise, in 1972 college educated Democrats preferred McGovern to Humphrey by a large margin, whereas among Democrats with a high school education or less Humphrey was preferred by a large margin.[11]

Professor Gary Orren has studied the 1976 primaries and concluded that while Udall drew support consistently from professional, college educated, upper income people, Carter drew support from all status categories. Carter support tended to be more varied than Udall support and depended on the state and the contest in that state.[12]

We can make two conclusions about the 1976 primary electorate. Demographically, the 1976 electorate is as unrepresentative of Democratic Party identifiers as previous

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[10] WISCONSIN

	Primary Electorate (New York Times)	General Electorate (Cambridge Survey Research)
Liberal	27%	23%
Moderate	44	36
Conservative	22	39

[11] Lengle, op. cit.

[12] See Gary Orren, Harvard University, unpublished paper, "The 1976 Presidential Primaries."

primary electorates. Furthermore, there are no easy ways to increase voter turnout in primaries so that the over-representation of the higher socio-economic groups is corrected. Austin Ranney demonstrated that restrictive registration laws do not explain low turnout in presidential primaries nearly as well as they do in general elections. Therefore, easing registration laws would not necessarily increase turnout in primaries.[13]

A second more tentative conclusion we can make is that in 1976 the overrepresented middle and upper middle classes did not produce an outcome significantly different from that which would have occurred with a more [15] representative primary electorate.

Caucus Participants

Data on caucus participants show that there are far fewer caucus participants than primary voters. In 1976, some 3.9% of the eligible persons participated in the caucus system; this was less than one-tenth the participation rate of the primaries. Like primary voters, they are drawn from the upper socio-economic strata. A study of the Minnesota caucuses in 1972 shows that more than twice the percentage of professionals were found in attendance at the caucuses as are found in the Democratic population.[14] The same study showed that caucus attenders are generally more liberal than other Democrats. This is not surprising due to the fact that research has shown repeatedly that politically active Democrats tend to be more liberal than rank and file Democrats and that politically active Republicans

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[13] Austin Ranney, "Participation in American Presidential Nominations, 1976". (Washington, D.C., American Enterprise Institute, 1977), p. 27.

[14] Thomas R. Marshall, "Delegate Selection in Nonprimary States; The Question of Representation". *National Civic Review*, September, 1976.

tend to be more conservative than rank and file Republicans.[15] Also as indicated earlier, primary participants in 1972 were more liberal than primary nonparticipants.

Finally, Minnesota caucus attenders were slightly less favorable towards Humphrey than non-participants, although these differences were not statistically significant.

In conclusion, rank and file participation in the nominating process has invariably been demographically unrepresentative of the Democratic rank and file. Whether nomination participants are unrepresentative on other dimensions probably varies from election to election.

[24] Section 4. STATE PARTIES AND THE PRESIDENTIAL PRIMARIES

. . . Whether or not primaries strengthen state parties depends on how one defines the party. To return to an earlier point, if one defines "the party" as those identifiers in the electorate, then primaries do involve many more people in the process. However, it is hard to know whether primaries strengthen the commitment of Democratic voters to the Democratic Party or to the Democratic candidates. As we have seen, some Democrats stay out of the primaries altogether. Also, some Democrats who are displeased with the outcome of the nomination process do not hesitate to vote for the Republican candidate for president. . . .

[29] Section 5. PROPOSALS FOR CHANGING THE NOMINATING SYSTEM

There are several directions that changes in the nominating system can take. We can move to a state by state caucus system, we can move to decrease the importance of primaries in

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[15] See Herbert McClosky, et al., "Issue Conflict and Consensus Among Party Leaders and Followers", *American Political Science Review,* 54 (June 1960), and David Nexon, "Asymmetry in the Political System: Occasional Activists in the Republican and Democratic Parties, 1956-64", *American Political Science Review,* 65 (September 1971).

the nominating system, we can move to a primary system with either a regional or a national plan, or we can maintain and perhaps strengthen the present mixed system.

Caucus Selection

Some people have looked at the recent proliferation of primaries and suggested that a return to the caucus method of selecting delegates has certain advantages. It is cheaper to campaign in a caucus state because not as much money must be spent on expensive media advertising. In a caucus state good organization counts most and a very personal type of campaigning occurs with the grass root supporters. However, if all states used the caucus system, it is doubtful that candidates would spend less money than they currently do.

Caucuses can be a powerful tool for involving more people in the party organization. In states where the caucuses have functions other than delegate selection, such as the drafting of a state party platform and nominating party and public officials, the caucus system promotes party unity and recruits workers.

Another argument for the caucus system is that it may be a more appropriate method for selecting delegates in small states, since it would save the expense of administering an election and because it is easier to have a representative convention in a small state than in a large one.

Proponents of the caucus system argue that the quality of participation in caucuses is superior to the quality of participation in primaries. Participants must attend a caucus meeting and participate in debate. Thus they make a greater commitment of time and energy than do voters who simply cast a ballot and return home.

People who oppose the caucus system generally do so on the grounds that the people who participate in it are the same old "courthouse gang" and are thus unrepresentative of voters in the electorate. Two points need to be made about this argument. The first is made by a study comparing Gallup polls

during the primary season with the outcomes of conventions from 1932 through 1972. James R. Beninger found that the vast majority of nominations have been won by the candidate who early on, consistently led the other candidates in the public opinion [30] polls.[1] This occurred despite the fact that in the majority of those conventions, delegates were chosen in some sort of party-dominated caucus system. Secondly, McGovern in 1972 won 13 of 28 caucus states even though he usually did not have the support of the "courthouse gang". Similarly in 1976, Carter, an outsider, was able to do quite well in caucus states. This is due in large part, no doubt, to the various protections for individual participants that the McGovern-Fraser and Mikulski Commissions built into the rules. It should be noted that these reforms have made the present day caucuses different from the party-dominated caucuses of the past. This probably explains why there are no significant differences between delegates from caucuses and primary states.

Others have opposed a return to the caucus system because they argue that issue enthusiasts or candidate enthusiasts can take over caucuses and that their views are not necessarily representative. This criticism is based to a large extent on experiences of caucus states in 1972. It should be noted that, as mentioned earlier, the primary electorates in 1972 were also not representative of the general electorate.

A more fundamental objection to the suggestion that more caucus systems be instituted relates to the value of maximum popular participation in the nominating process. Thus, while caucuses clearly have important party-building characteristics, they are also more burdensome and, accordingly, attract far fewer participants than do primaries. Entirely apart from the "representativeness" or "quality of participation" under each system, then, there is an important and positive value in

[1] James R. Benninger, "Winning the Presidential Nomination: National Polls and State Primary Elections, 1936-1970" *Public Opinion Quarterly*, Spring 1976.

allowing as many party adherents as possible to participate in the nominating process by eliminating all unnecessary obstacles to such participation.

The Commission in no way feels that caucus delegate selection is a less legitimate delegate selection procedure than primary selection. Both systems have inherent strengths and weaknesses, and the question of which system is better for use in particular states is a decision best made by the state party and not by direction of the National Party.

Decreasing the Role of Primaries

Others have advocated decreasing, in some way, the impact that primaries have in the nomination process. One way to do this is to limit the number of delegates to the convention that could be selected in the primaries. Delegates not selected by a primary would be selected by a party-run delegate selection system.

People who favor these proposals feel that the increase in the number of delegates chosen in primaries has [31] been detrimental to party-building efforts and has sometimes produced delegations unrepresentative of rank and file Democrats. However, opponents point out that some of these plans would require a state party to administer two delegate selection systems — a primary and a caucus system. They also point out that, since the public supports primaries, including regional and national primary plans, any move to decrease the role of the primaries could be very unpopular with rank and file Democrats.

Instead of having all delegates chosen in caucuses, some have suggested a plan that combines caucuses and primaries. This plan would have all delegates chosen through separate party processes but bound by the results of primaries in those states which have preference primaries. This is already the system which exists in most proportional representation states where the delegate candidates' names are not on the ballot

since they are selected in caucuses. Once the caucuses select a group of delegates the number of those delegates that actually go to the convention is determined by the outcome of the primary, or alternatively, the delegates for each candidate are selected after the primary has been held.

Others have suggested that improved standards be developed for the kinds of primaries that are allowed to send delegates to the convention. Standards are advocated in order to bring some order into the currently chaotic primary system, in order to assure a meaningful choice to the voters and to require states to re-examine their primaries.

The National Primary

Others have advocated increasing the use of the direct presidential preference primary through federal legislation which would mandate that states having primaries have them on the same day or that all states must have a presidential primary on the same day. There are currently six proposals before Congress, any one of which, would establish a one-day national presidential primary.[2]

The Commission is strongly opposed to proposals for a national primary. Perhaps the most important reason for its opposition is that the Commission and the Democratic Party is very concerned that the Party maintain its right to regulate its own affairs without Congressional interference. The 1976

[2] One establishes a primary on the 1st Tuesday in June for any state holding a primary election for presidential candidates (Primaries Act, Carney, Illinois). Another establishes a national primary on the first Tuesday in September with a 45% win rule (Presidential elections, Gaydos, Pennsylvania). A third proposal sets a federal primary for both days of the last weekend in June (Presidential elections, Legget, California). The final two set a national primary for the Tuesday after the first Monday in August (Presidential primaries, Weicker, Connecticut). This latter proposal is brought by the only Republican bringing a national proposal and it also includes provisions for terminating public financing of campaigns.

National Convention passed the following resolution as recommended by the Rules Committee:

> Section 5. Resolved further that this Convention, recognizing the Responsibility of our National Party to provide for our Presidential nominating process, urges the U.S. Congress to refrain from [32] intervening in these Party affairs unless and until the National Party requests legislative assistance, and in no case should Congress legislate in any manner which is in derogation of the right of a National Party to mandate its own affairs.

Proponents of the national primary concept make substantially the same arguments as do people who advocate abolishing the Electoral College. Both groups feel that any institution, be it the Convention of the Democratic Party or the Electoral College, which stands between the voters and the outcome of a nomination or election is an illegitimate interference with the people's right to freely choose public officials.

Public opinion has been consistently in favor of proposals for a national primary. Proponents of the national primary argue that it comes closest to insuring that the popular choice of the party's rank and file will receive the party's presidential nomination. However, as we have seen, turnout in presidential primaries is low and sometimes unrepresentative. The fact that the national primary appears simple and fair probably contributes to its high support in public opinion polls. Delegates to the 1976 Democratic National Convention were strongly opposed to the idea of a national primary (65% opposed and 22% in favor).

The main appeal of the national primary is its simplicity. Proponents complain that the current system is long and complicated and that it tires the candidates. Opponents point out that the job of President is also complicated and tiring and

that convenience to the candidates ought not be the guiding principle of a nominating system.

The most important objection to a national primary is that it would drastically change and possibly disrupt the institutional roles in the arena of national politics. For instance, it is highly likely that no candidate in a national primary would receive a majority of votes and that a plurality winner might be the first choice of cohesive ideological block and the second choice of very few voters. Candidates could emerge who would be unable to win the general election. The convention would become a mere ratifying body and would not be able to function as a mechanism for compromise and consensus. In a diverse country such as the United States, political stability is dependent upon the ability of the major political institutions to meld together widely disparate ideologies.

A one-day national presidential primary would probably spell the end of the national party system as we know it. A national primary could indicate trends within the public but could not resolve party conflicts. There would be [33] nobody to formulate viable public policies and make sure that the elected officials tried to bring those policies to fruition.

A national primary would also favor candidates who already had national reputations and who would buy large chunks of media. It would change the primary system from one conducted at the grass root level in many states to one conducted from television studios of the major cities.

The current primary season gives a lesser known but good candidate a chance to get some small state wins and build momentum. Another positive aspect of a long primary system is that it provides more time for the public to evaluate the candidates. Thus, the importance of a one time issue is minimized, as is the possible effect of any "dirty tricks" intended to seriously damage a candidacy. The existing system

also allows the candidate to be evaluated by groups of Democrats in different states with different issue concerns. In a national primary the candidate would have to concentrate his or her campaign in the most densely populated states that would yield the most votes.

The Regional Primary

Another set of congressional proposals for increasing the role of primaries consists of proposals for some form of mandatory regional primary as in the Ottinger plan.[3] To repeat an earlier point, the Commission is opposed to congressional intrusion into party affairs.

Another objection to plans for a regional primary is that it would be very difficult to equitably establish the sequence of regions holding primaries. Past experience has shown that the first primary has a powerful impact on subsequent primaries. In a regional plan the first region to hold its primary would, likewise, have a powerful impact on subsequent primaries.

Furthermore, the outcome of a regional plan could vary greatly depending upon which states are included in which region. The arbitrary division of the country into regions could heighten regional tensions or sectional rivalries.

Any regional plan, even if it did not mandate that states must have primaries, would probably have the effect of making states without primaries move to primaries. As mentioned

[3] The most well-known proposal is the one by Senator Packwood. It establishes five regional primaries. Under this plan states are not required to select delegates by a primary system. Similar proposals have been made by Bennett of Georgia, requiring 6 instead of 5 regions, and by Hamilton of Indiana. Ottinger of New York has proposed a system which is different from the above plans in that it requires states to select delegates by primaries in one of five mandated regions. Every state in a region would hold its primary on the same date, at 3 week intervals, from April through June of the Presidential election year.

earlier in this report, several states adopted primaries in 1976 in order to become part of a de facto regional system.

Advocates of a regional primary system maintain that the system that currently exists is exhausting to the candidates who have to crisscross the country for months prior to the convention. Because of all the travel, [34] candidates needlessly spend money as well as energy.

It has been argued that, because the system is so exhausting, good candidates are discouraged from running. Similarly, proponents argue that a less exhausting campaign would yield a higher quality campaign. According to Senator Packwood, in 1976:

> We will watch exhausted candidates wasting time on the cumbersome process rather than focusing on the issues.[4]

The regional system would not only be easier on the candidates but on the voters. Representative Ottinger has argued that one of the faults of the current system is that:

> The public will be exposed to a constant barrage of information, speculation and evaluation on and about the presidential nominating process . . .[5]

Senator Packwood maintains that:

> . . . the confusion caused by this lack of uniformity in state (primary) laws has given rise to cynicism, frustration, and distrust of the nomination process.[6]

Thus, regional primaries would simplify the process and ease cynicism on the part of the voters. A corollary of this argument is that the simpler process would increase voter turnout.

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[4] Congressional Record—Senate, 2/23/76.
[5] Congressional Record—House, 2/26/76.
[6] Congressional Record—Senate, 2/23/76.

Finally, proponents of a regional system argue that it would deflate the importance of a first primary which may have an influence on the process which is out of proportion to its size and importance in the convention and in the general election.[7]

Opponents of the regional system point out that it will not, in fact, cure all the evils of the present system and that it may have undesirable consequences as well.

They point out that the assumption that a candidate would stay in New England for two or three weeks before the primary and not be tempted to go to Los Angeles or Chicago during that time to start building support for other, later primaries which might be important for him, is unrealistic. Another unrealistic assumption is that a candidate would spend less money in a system which would require him to run in more primaries; since a probable result of even a regional plan which did not require all states to have primaries is that the actual number of primaries would increase.

Opponents further question the assumption that candidates do not focus on issues because they are too busy [35] learning the different rules in a non-standardized system. Whether or not a candidate focuses on issues probably has more to do with his style and his campaign strategy than the type of system. To the extent that regional primaries increase a candidate's dependence on television advertising, regional primaries could decrease instead of increase the time candidates spend on issues.

While some think that the current hodgepodge system turns off and confuses the voters, others point out that an advantage of the present primary system is that it allows many

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[7] Senate Packwood argued that:

> Americans will remember the state of New Hampshire, even if they do not hold the first primary... We do not need the New Hampshire primary to remind us where New Hampshire is and what it stands for. (Congressional Record—Senate, 2/23/76)

voters to look at the candidates over time and in many different contexts. The exposure to a "constant barrage of information, speculation and evaluation" that Senator Packwood laments is seen by many as a positive feature of the present system in that it educates the public.

Furthermore, there is no reason to believe that people do not vote because the primary system is not uniform, nor is there any reason to believe that regional primaries will cure the very complicated problem of low primary turnout which plagues all different kinds of primaries.

After consideration of these arguments most of the Commission opposed the concept of a regional primary system instituted either by congressional action or by party law.

Limiting the Time Span of the Delegate Selection Process

There are two plans which establish some parameters on the delegate selection system by setting dates. Congressman Morris Udall's plan provides for four dates on which primaries may be held. However, no state under this plan would be required to hold a primary.

A variation of this plan is called the "window concept". Instead of specifying dates on which primaries or caucuses must be held, this plan specifies a time period during which states must conduct their delegate selection process. The National Party could set a period of time, for instance from March to June, during which primaries or caucuses had to occur.

It should be noted that if the National Party decides to adopt either the Udall plan or a variation of the "window concept", it may have to amend Article 11, Section 8 of the Charter which reads:

> To assure that the Democratic nominee for the office of President of the United States is selected by a fair and equitable process, the Democratic National

> Committee may adopt such statements of policy as it deems appropriate with respect to the timing of Presidential primaries [36] and shall work with state Parties to accomplish the objectives of such statements, provided, however, that such statements of policy shall not be deemed to be binding upon any states in which the state laws are in conflict with such statements.

However, when legal opinion was received the opinion stated that, under the Charter and under Cousins v. Wigoda, the National Committee had the authority to implement one of these plans.[8]

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[8] Legal opinion was received from Ron Eastman, General Counsel Democratic National Committee in a letter dated January 18, 1978. The following are excerpted from it:

> "1. Does the Charter impose any restrictions on the National Party with respect to the establishment of beginning and ending dates for the delegate selection process?
>
> Article Two of the Charter prescribes the earliest possible date for the beginning of the delegate selection process. It provides, among other things: "The National Convention shall be composed of delegates who are chosen through processes... (vi) beginning within the calendar year of the Convention...." Article Two, Section 4. That requirement is subject to the proviso that fairly apportioned and openly selected state party committees which are elected no earlier than January 1 of the preceding Congressional election year from states which have no state conventions authorized to elect delegates may select "not more than 25%" of the state delegation. *Id.* The Charter imposes no restrictions as to ending dates for the process.
>
> 2. Absent or within the constraints of any Charter provision does the National Party under *Cousins v. Wigoda* have the authority to establish beginning and ending dates (Preliminary Report, Part II, p. 9, solutions a-c) for the delegate selection process?

(*footnote continues*)

Conclusion

Examining the most frequently discussed alternatives to the current system points out some of its strengths as well as some of its weaknesses. Perhaps its basic strength is that it allows the voters to study a field of candidates in many different settings. It also allows a little known candidate to emerge as the nominee.

The fact that the present system is complicated and non-standardized does not mean that it should be radically altered. Candidates and their organizations have no trouble figuring out the nomination rules and voters do not need to understand the rules governing all 50 states. What is important is that they are able to clearly express their presidential preference.

(*footnote continued*)

Under *Cousins v. Wigoda,* 419 U.S. 477 (1975), the National Party does have the authority, in my opinion, to establish beginning and ending dates for the delegate selection process subject, of course, to the restrictions the Party itself has established in the Charter. All of the possible solutions proposed in the Winograd Commission's Preliminary Report, Part II, p. 9 are within the authority of the National Party. As noted above, however, the Charter does not impose some restrictions on beginning dates for the process.

The Charter also provides that "statements of policy" "with respect to the timing of presidential primaries" shall not be deemed binding "upon any states in which that state laws are in conflict with such statements", Article XI, Section 8. Thus, except for the Charter's requirement that the process begin no earlier than January 1 of the Convention year, State law will control as to timing of presidential primaries under the Charter. That rule is tempered by Article Two, Section 2, which specifically requires the state party to take "provable positive steps" to impose legislative changes to bring state law into compliance with the Party rules where conflict exists."

It frequently happens that advocates of change claim that their reforms (in this case national and regional primaries) will cure many evils of the current system. As we have seen the agreed upon ills of the current system, its complexity or its length, may not be ills at all. Even if the length, expense and wear on candidates is seen to be a problem, there is no guarantee that national or regional primary proposals would yield better results.

More important is the fact that regional and national primary proposals could have many unintended consequences that would be harmful to the national political process.

About half of the members of the Commission would prefer a larger proportion of state caucus systems in the present national "mix" of caucus and primary systems. However, the Commission unanimously opposes any national party rule mandating one system or the other for all states and territories.

The Commission believes that the best course is to work within the existing system to establish improved standards for primary and caucus systems that will ensure that those delegate selection processes contribute to the values of openness, full participation and party building with which the Party has been concerned. With this in mind we turn to Part II of this report which is a consideration of alternatives to the existing rules governing delegate selection.

OPENNESS, PARTICIPATION AND PARTY BUILDING REFORMS FOR A STRONGER DEMOCRATIC PARTY

PART IV

DISCUSSION OF THE 1976 DELEGATE SELECTION RULES AND RECOMMENDATIONS OF THE COMMISSION ON PRESIDENTIAL NOMINATION AND PARTY STRUCTURE

The following is based on an examination of the 1976 delegate selection experience in relation to the 1976 Delegate Selection Rules. The Commission on Presidential Nomination and Party Structure voted for the recommendations for rules changes in Part IV

[68] Section 2. *Open and Crossover Primaries*

Relevant 1976 Delegate Selection Rules

2. DEMOCRATIC PARTICIPATION

> A. State Parties must take all feasible steps to restrict participation in the delegate selection process to Democratic voters only. Such steps shall be included in proposed Party rules submitted to the Compliance Review Commission of the National Democratic Party. Such rules, when approved by the Compliance Review Commission and implemented shall constitute adequate provisions within the meaning of Section 9 of the 1972 Democratic National Convention mandate.

1976 PROBLEMS

Two distinct arguments have been made in favor of banning open and crossover primaries. Some have argued that

Republicans "raid" Democratic primaries. However, the existence of "raiding" has never been conclusively proven by survey research.

Research has demonstrated that Republicans have voted extensively in certain open primaries. In an article Austin Ranney published on the 1968 Wisconsin primaries "Turnout and Representation in Presidential Primary Elections", (American Political Science Review, March, 1975.) he found that Republicans voted in the Democratic primary for McCarthy but that:

> McCarthy Republican supporters clearly did not vote for him because they thought he would be the easiest Democrat for Nixon to beat in November; they did so because they liked him and his opposition to the Vietnam war.

A stronger argument for banning open primaries is suggested by research which indicates that the Republicans who crossover have different candidate preferences from the Democratic party identifiers in the electorate. David Adamany in an article called "Crossover Voting and the Democratic Party's Reform Rules" (*American Political Science Review, June, 1976.)* found that this was the case in Wisconsin in 1972. Crossovers, he found, could result in a convention delegation which did not fairly reflect the division of preferences among Democratic identifiers in the electorate.

Some states (Alabama and Texas, for example), in an effort to discourage crossover voters, include statements on ballots binding the voter to support the election [69] results and winners. A further deterrent to crossovers occurs when a state holds state primaries simultaneously with presidential primaries.

SOLUTION A

In order to strengthen this rule and insure compliance the Commission recommends that Rule 2 impose minimum standards for restricting primaries to Democratic voters.

> Amend Rule 2A by deleting the first two sentences of Rule 2A and inserting in place thereof the following:
>
> Participation in the delegate selection process in primaries or caucuses shall be restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. Documentary evidence of a process which complies with this rule shall accompany all state Delegate Selection Plans upon their submission to the National Party.

SOLUTION B

The Commission recommended strengthening Rule 2A and letting the State Party know in advance what is going to happen in the event that all provable positive steps have failed by specifically exempting Rule 2A from Rule 20.

> Amend Rule 2 by adding a new paragraph lettered "B" and by relettering Rule 2B as "C". The new "B" would read as follows:
>
> B. A Rule 20 exemption shall not be granted from Rule 2A requirements.

SOLUTION C

The Commission recommends that an automatic process be adopted under which a non-complying state would shift to a delegate selection system that complies with this rule.

> Amend Rule 2 by adding a new paragraph letter "C" and by relettering current "C" as "D". The new "C" would read as follows:

C. A State Party which is precluded by state statute from complying with this rule shall adopt and implement an alternative Party-run delegate selection system which complies with this rule.

THE STATE OF WISCONSIN

[SEAL]

September 1979 Spec. Sess.
ASSEMBLY JOINT RESOLUTION 1

ENROLLED JOINT RESOLUTION

Reaffirming the firm and enduring commitment of the people of Wisconsin to the open presidential preference primary law as an integral element of Wisconsin's proud tradition of direct and effective participatory democracy and endorsing the actions taken by the attorney general to preserve and enforce the provisions of that law.

Whereas, the Wisconsin presidential preference primary has been conducted as an open primary since its inception in 1911 and is deeply rooted in the progressive, honest and corruption-free traditions of this state; and

Whereas, continuation of the open primary is essential to preserve the integrity of the voting rights of all our citizens and to assure their full and fair participation in the presidential nominating process; and

Whereas, all Wisconsin citizens are entitled to the continued free exercise of their right to vote unfettered by repugnant loyalty oaths imposed by a national political party; and

Whereas, Wisconsin's open primary law protects the voting rights of every citizen by requiring that their preferences for the respective presidential nominee be reflected in the vote of the delegates in the nominating process at the respective parties' national conventions; and

Whereas, the people of Wisconsin do not favor closing or modifying the open presidential preference primary as contained in chapters 5 and 8 of the statutes; now, therefore, be it

Resolved by the assembly, the senate concurring, That the people of Wisconsin, as represented by their legislature, reaffirm their commitment to the open primary law as essential to a fully representative and participatory democracy and the full exercise of effective voting rights; and, be it further

Resolved, That the legislature declares its firm determination to resist and oppose the current efforts by the Democratic National Committee to force Wisconsin to repudiate the open presidential preference primary law; and, be it further

Resolved, That the legislature declares that it will take such steps as may be necessary to assure that the open presidential primary, as a duly enacted law of the state of Wisconsin, is fully and lawfully enforced; and, be it further

Resolved, That each house of the legislature, pursuant to section 165.25(1) of the statutes, hereby affirms its support for the attorney general's efforts to preserve and protect the Wisconsin open presidential preference primary and requests and encourages the attorney general to take those steps deemed necessary and proper to enforce that law.

Senator Fred A. Risser President of the Senate	Representative Ed Jackamonis Speaker of the Assembly
Date	Marcel Dandeneau Assembly Chief Clerk

HISTORY OF ASSEMBLY

ASSEMBLY JOINT RESOLUTION 1, September 1979 Special Session Reaffirming the commitment of the people of Wisconsin to the open presidential primary law as an integral element of Wisconsin's proud tradition of direct and effective participatory democracy and endorsing the actions taken by the attorney general to preserve and enforce the provisions of that law.

9-5.A. Introduced by COMMITTEE ON RULES..... 1111

9-5.A. Read and referred to calendar..... 1111

9-5.A. ADOPTED..... 1111

9-5.A. Ordered immediately messaged 1111

9-5.S. Received from Assembly 686

9-5.S. Read and referred to committee on Senate Organization 686

9-5.S. Senate substitute amendment 1 offered by Senators Bablitch, Berger, Cullen, Radosevich, Braun, Van Sistine, Moody, Strohl, Roshell, Adelman, Bear, Goyke, Offner, Frank, Swan, Harnisch, Kleczka, Risser, Maurer and Flynn. 687

9-5.S. Senators Krueger, Murphy, Bidwell, Kreul, Johnston, Lorge, Chilsen, Lasee, McCallum, Theno, Opitz and Hanaway added as coauthors of Senate substitute amendment 1 687

9-5.S. Senator Thompson added as a coauthor of Senate substitute amendment 1 687

9-5.S. Senate substitute amendment 1 ADOPTED..... 687

9-5.S. CONCURRED IN as amended, Ayes 33, Noes 0 687

9-5.S. Ordered immediately messaged 688

9-5.A. Received from Senate amended and concurred in as amended (Senate substitute amendment 1) 1112

9-5.A. Assembly amendment 1 to Senate substitute amendment 1 offered by Representatives Jackamonis, Wahner, Tuczynski, Kirby, Ferrall, Rogers, Kedrowski, Andrea, Barczak,

Barry, Becker, Behnke, Bradley, Byers, Clarenbach, Coggs, Conradt, Czerwinski, DeLong, Dilweg, Donoghue, Dorff, Duren, Ellis, Everson, Fischer, Flintrop, Gagin, Gerlach, Goodrich, Harer, Harsdorf, Hasenohrl, Hauke, Helbach, Hephner, Hopkins, Johnson, Kincaid, Klicka, Laatsch, Ladwig, Lallensack, Larson, Leopold, Lewis, Lewison, Lingren, Loftus, Lorman, Luckhardt, McClain, McEssy, Matty, Medinger, Menos, Merkt, Metz, Miller, Munts, Murray, Norquist, Nelsen, Omernick, Otte, Pabst, Paulson, Plewa, Porter, Potter, Prosser, Quackenbush, Radtke, Roberts, Rooney, Rutkowski, Schmidt, Schneider, Shabaz, Shoemaker, Smith, Snyder, Soucie, Stitt, Swoboda, Tesmer, Thompson, D. Travis, R. Travis, Tregoning, Ulichny, Vanderperren, Wagner, Ward, Wood and Young 1112

9-5.A. Assembly amendment 1 to Senate substitute amendment 1 ADOPTED 1112

9-5.A. Senate substitute amendment 1 concurred in as amended, Ayes 92, Noes 1, Paired 2 1113

9-5.A. Ordered immediately messaged 1113

9-5.S. Received from Assembly amended and concurred in as amended (Assembly amendment 1 to Senate substitute amendment 1 adopted) 689

9-5.S. Assembly amendment 1 to Senate substitute amendment 1 CONCURRED IN 690

9-5.S. Ordered immediately messaged 690

9-5.A. Received from senate: assembly amendment 1 to senate substitute amendment 1 con curred in .....

9-7.A. Report correctly enrolled .....

I hereby certify that the above and foregoing is a true and correct copy of the legislative action taken on Assembly Joint Resolution 1 by the September 1979 special session of the Wisconsin Legislature.

_____

Chief Clerk of the Assembly

STATE OF WISCONSIN EX REL. BRONSON C. LA FOLLETTE,

v.

DEMOCRATIC PARTY OF THE UNITED STATES OF AMERICA,

93 Wisc. 2d. 473, 287 N.W.2d 519 (1980)

BRIEF AND APPENDIX OF PETITIONER

[29] F. *The law is rationally related to permissible objectives and serves the compelling interest of a full participatory democracy*

[32] 2. The Open Primary Law is a necessary to secure many essential interests of a democracy

First and foremost, the Wisconsin law secures an essential feature of a representative democracy by providing that all eligible voters may participate in the process of selecting a President.

This law serves additional interests which are fundamental to a democracy. In guaranteeing a private primary ballot, it serves the critical interest of privacy of political preferences and convictions. This interest is "fundamental in a free society," and the advent of the secret ballot is "one of the great political reforms." *Buckley v. Valeo*, 424 U.S. 1, 237 (1976) (Burger, C.J., concurring.)

This right of privacy also precludes the chilling effect which would befall some voters. Regular Republicans who wish to identify with a Democratic candidate in a particular year undoubtedly are deterred from doing so if they must publicly declare themselves to be Democrats. Similarly, voters who generally are independent but wish to identify with a particular candidate in a primary will be [33] deterred by a requirement to publicly surrender their neutrality.

Apart from forestalling a chilling effect on the exercise of first amendment freedoms, the Open Primary Law encourages the exercise of the associational freedoms of independents and Republicans who wish to vote in the Democratic primary in a particular year, as well as Democrats who wish to vote in the Republican primary. Unquestionably, the first amendment grants voters the right to associate with candidates by voting for them. "All political ideas cannot and should not be channeled into the programs of our two major parties." *Sweezy v. State of New Hampshire,* 354 U.S. 234, 250-251 (1957), *reh. denied,* 355 U.S. 852 (1957). "The right to vote freely for the *candidate* of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims,* 377 U.S. 533, 555 (1964). (Emphasis added.) " 'The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance.' " *Lubin v. Panish,* 415 U.S. 709, 716 (1974).

As noted, states have the prerogative to restrict these rights. *See* discussion, *supra,* pp. 13-15. But even in this [34] regard, the state's powers are not unlimited. Thus, in *Yale v. Curvin,* 345 F. Supp. 447 (3-judge court, R.I. 1972), the court struck a state law which denied the right to vote in the 1972 Democratic presidential primary where a citizen had voted in the 1970 Republican gubernatorial primary. The law had failed to consider how "loyal and attached to the policies of one of the Democratic presidential aspirants" the voter might be. 345 F. Supp. at 452. And in *Kusper v. Pontikes,* 414 U.S. 51 (1973), the Court struck Illinois' law barring voting in a primary if a person had voted in another party's primary within the preceding twenty-three months. The Illinois law impermissibly locked in the voter to his pre-existing party affiliation, and since a "prime objective of most voters in associating themselves with a particular party" is to participate in the selection process, the Illinois statute deprived the voter of "any voice in

choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice." 414 U.S. at 58.

Just as a state can limit voter affiliation with parties and candidates, within limits, so also can a state exercise its powers to promote voter rights to associate with candidates. States are the historic guardians of individual liberties, and they can grant more liberties than the federal constitution compels. *See, Oregon v. Haas,* 420 [35] U.S. 714, 719 (1975), and *State v. Doe,* 78 Wis. 2d 161, 171, 254 N.W.2d 210, 215 (1977). This principle is especially apt here inasmuch as from its inception the Federal Constitution has reposed in the states the power to determine who may participate in the process of selecting a President. U.S. Const. art. II, sec. 1. *See* discussion, *supra,* pp. *8-10.*

In protecting these privacy and associational interests, the law also produces an invaluable benefit in the life of a democracy. The Open Primary attracts candidates to Wisconsin to appeal to a wide spectrum of voters. The general electorate becomes better informed. The candidates must address a broader range of interests than if they were appealing only to Party regulars in their private meetings and caucusses.

Finally, the Presidential selection process is cleansed of the improper influences of King-caucus and backroom manipulations which gave rise to the primary in the first instance.

Many of these interests have been upheld even under a compelling interest standard. As noted, *Storer v. Brown,* 415 U.S. 724, 735 (1974), found a compelling state interest in requiring independent candidates to have been disaffiliated from partisan parties and primaries for a certain period of time to give the voters "understandable [36] choices" and a winner "with sufficient support to govern effectively." *Buckley v. Valeo,* 424 U.S. 1 (1976), upheld various federal regulations on the process of selecting a President both in primaries and in general

elections. An expenditure limitation was upheld because it "enhances the opportunity of bona fide groups to participate in the election process." *Id.* at 35. The financing of presidential elections and primaries was upheld as serving to "facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising." *Id.* at 91. And even the *appearance* of impropriety in the selection process warranted infringement on the rights of contributors to make unlimited financial donations. The restrictions could "limit the actuality and appearance of corruption resulting from large individual financial contributions." *Id.* at 26. The Court said to the extent large contributions were given to exact political quid pro quo's, "the integrity of our system of representative democracy is undermined." *Id.* at 26-27.